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BY E-MAIL

May 3, 2012

COMPLAINT BEFORE THE FEDERAL ELECTION COMMISSION

The New Mexico Republican Party files this complaint seeking an immediate investigation into Independent Source PAC's ("ISP") and the Communication Workers of America's ("CWA") numerous violations – **including potential knowing and willful federal criminal violations** – of federal campaign finance law.

ISP, a SuperPAC, has filed multiple false independent expenditure reports. ISP has also utterly failed to properly report, account for, and disclaim its independent expenditure activity. Moreover, ISP appears to have conspired with CWA to defraud the Federal Election Commission (the "Commission"). In doing so, ISP and CWA are defying federal campaign finance law – and denying the people of New Mexico the very transparency and accountability that the law mandates.

ISP's and CWA's violations are ongoing, are potentially criminal in nature, and the Commission must act to stop their numerous violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), 2 U.S.C. §§ 431 *et seq.*, Federal Election Commission ("FEC") regulations, and 18 U.S.C. §§ 371 and 1001.

FACTS

"Independent" Source PAC is wholly funded by the Communication Workers of America ("CWA"). CWA is a Washington, D.C.-based labor organization that vehemently opposes New Mexico Governor Susana Martinez. *See* Att. A

New Mexico state law, however, made it difficult for D.C.-based CWA to fund a negative campaign against Governor Martinez because of the \$5,000 cap on contributions from organizations such as CWA to in-state PACs, including contributions made to independent expenditure-only in-state PACs.¹ [1-19-34.7(A)(2)(C) NMSA 2009].

¹ Indeed, the fact that ISP is simply a state PAC masquerading as a federal PAC in order to circumvent New Mexico law is only underscored by ISP Director Michael Corwin's

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ISP was registered with the Commission on January 23, 2012. Its first contribution from CWA was reported as received on October 13, 2011. In 2011, ISP received a \$100,000 contribution from CWA. Between January 1 and March 31, 2012, ISP received a \$90,000 contribution from CWA. CWA is ISP's sole donor. ISP has made no other independent expenditures, or conducted any other activity aside from administrative activity, outside of those described in this complaint.

ISP then began spending this money in January 2012 – over \$91,000 on broadcast and cable television advertising.

To date, ISP has aired five ads:

- (1) *"Education Privatization," "Parents' Rights" and "Suzanna Martinez's Attack On Parents' Rights"* attack Governor Martinez's efforts to reform and improve New Mexico's public education system and better the lives of New Mexico's children and families;
- (2) *"Drivers License"* attacks Governor Martinez for upholding the law, protecting New Mexico's citizenry, and refusing to issue New Mexico drivers licenses to illegal aliens; and
- (3) *"Dirty Downs Deal"* attacks Governor Martinez, albeit incoherently, over ISP's apparent theory concerning a state contract award.

Each ad's call to action is "call Governor Martinez and tell her x." The only officeholder pictured in any ad – and she appears in each of them – is Governor Martinez.

The ads' scripts read as follows:

"Education Privatization": "Susana Martinez is trying to get rid of neighborhood schools by opening the door to out-of-state profit-making virtual schools. She is playing with our kids' future. Turning them into guinea pigs while sending our scarce educational dollars to enrich out-of-state corporations. New Mexico education dollars need to go our classrooms our teachers and our kids, not to making out-of-state corporations rich. Contact Susana Martinez and tell her you want a real education for your kids. Paid for by Independent Source PAC" (Independent Source PAC, "Education Privatization" <http://youtu.be/kLFAV51oyzk>, Accessed 04/19/12)

statement that since he believes Governor Martinez is unlikely to become a Vice Presidential candidate, ISP "will redirect its efforts to trying to unseat conservative members of the state legislature." (State legislators are not federal candidates or officeholders within the definition of federal law). Att. B (the 4/17/12 Monteleone AJ article).

"Parents' Rights": "Governor Susana Martinez wants to cut parents out of making decisions about their own child's education. She says parents' rights are 'petty status quo'. She says no to a compromise that protects parents' rights to choose if their child advances or stays behind. Should a state institution make important decisions about your child's future or should you? Contact Governor Martinez and tell her to stop interfering with your rights as parents. Paid for by Independent Source PAC." (Independent Source PAC, "Parents' Rights" <http://youtu.be/UrW0u409d64>, Accessed 04/19/12)

"Susana Martinez's Attack on Parents' Rights": "Governor Susana Martinez wants to cut parents out of making decisions about their own child's education. She says parents' rights are 'petty status quo'. She refuses any compromise on mandatory retention. So parents will no longer be allowed to choose if their child advances or stays behind. Should a state institution make important decisions about your child's future or should you? Contact Governor Martinez and tell her to stop interfering with your rights as parents. Paid for by Independent Source PAC." (Independent Source PAC, "Susana Martinez's Attack on Parents' Rights" <http://youtu.be/NRQkUPpMc6E>, Accessed 04/19/12)

"Driver's License": "Why is Susanna Martinez making New Mexico a more dangerous place? Top law enforcement officials agree, the public is much safer when everyone has a driver's license. Martinez won't compromise to strengthen license regulations for undocumented workers. This means no to helping police find and arrest criminals, no to stopping hit and runs, and no to reducing fraud. She would rather force people into the shadows just to score political points. Susanna Martinez refuses to compromise and we all lose. Paid for by Independent Source PAC" (Independent Source PAC, "Driver's License spot" <http://youtu.be/3FdBIv7sqrM>, Accessed 04/19/12)

"Dirty Downs Deal": "Susana Martinez is good to her friends, especially if they anti-up a lot of money to Susana PAC. She says she is against government corruption but that didn't stop her from manipulating the odds to benefit her pals at the Downs at Albuquerque. She got them a billion-dollar contract by muscling her way into the deal, stacking the deck with her cronies and playing it close to the vest by withholding information. Does this sound like a fair deal for New Mexico? For more information go to Independent Source PAC." (Independent Source PAC, "Dirty Downs Deal :30" <http://youtu.be/MSf323axcws>, Accessed 04/19/12)

None of ISP's ads – *not one* – name or show a single federal candidate, reference

any federal candidate's election or defeat, or refer to President Obama in any way whatever.

Each of ISP's independent expenditure reports, however, state that ISP's expenditures are made in support of President Barack Obama.

ISP's independent 48-hour expenditure reports also appear to be filed long after the related ads aired, and while they account for the purchase of air-time show no accounting for any other costs associated with the expenditures, such as a creative or production cost. Such costs, however, *do* appear to be reported on ISP's quarterly reports, indicating funds were expended, but not properly reported on ISP's 48-hour expenditure reports as required by law.

Finally, four of the five ads are disclaimed with a written ISP web address only, and the audio states only that they are "paid for by Independent Source PAC." None of the ads state that ISP is responsible for the ads' content in either verbal or written form, as required by law.

VIOLATIONS

Knowing and Willful False Reporting and Conspiracy to Defraud the Commission

ISP's Form 5 48-hour reports state that its expenditures were made in support of President Barack Obama. The ads themselves, however, do not make a single mention of either President Obama or Vice President Biden. They make no general reference to either the Democratic or Republican Parties. They neither support nor oppose a single federal candidate. They do one thing: attack Governor Martinez's state policies. (Governor Martinez is not a federal candidate).

18 U.S.C. § 1001 makes it a federal crime to knowingly and willfully:

- (1) falsify, conceal, or cover up by any trick, scheme, or device a material fact;
- (2) make any materially false, fictitious, or fraudulent statement or representation; or
- (3) make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.

18 U.S.C. § 371 makes it a federal crime for any two people to conspire to either commit any offense or defraud any agency of the United States and to commit any act to effect such conspiracy.

By stating in their numerous signed filings that their independent expenditures supported President Obama, ISP essentially admits to filing false 48-hour reports. None

of ISP's ads even mention President Obama (or any other federal candidate for that matter), much less expressly advocate for his election – the actual standard that such a statement by ISP requires.

Attempting to explain how its ads support President Obama, ISP Director Corwin stated “we seriously think [Governor Martinez] would be horrifically bad as a vice president.” Att. B. Of course, Governor Martinez is not running for Vice President, or any other federal office. ISP's statement, aside from being nonsensical, only further demonstrates that their ads had *nothing to do* with supporting President Obama's election campaign.

Regardless, the ads are clear on their face – and ISP's filed 48-hour reports falsely state that the ads say something they do not. ISP has expended over \$190,000 in such expenditures; they have produced and aired 5 ads; and they have filed [2] 48 hour reports – all objectively false. ISP's violation is knowing and willful. It is a crime.

It appears that ISP also conspired with CWA to defraud the Commission in order to avoid New Mexico state law.

CWA is ISP's sole donor. ISP was created immediately before CWA's contribution was received by ISP. ISP's own director Michael Corwin's on-the-record statements make it clear that ISP is a state PAC masquerading as a federal PAC – and that the federal PAC's focus is now on “unseating conservative state legislators.” Att. B.

CWA and ISP have conspired to evade New Mexico limits through the creation of a sham federal PAC and defrauding the Commission. The formation of the PAC, CWA's contributions to it, ISP's creation and airing of its ads, and ISP's filing its false 48-hour reports are each acts in furtherance of that conspiracy. That too is a crime.

The Commission must put a stop to it, and refer ISP's and CWA's potentially criminal violations to the United States Department of Justice.

Failure to file 48-Hour Reports

In several instances, ISP's independent expenditure ads aired long before ISP got around to filing the related independent expenditure reports that federal law requires be filed, in this case, within 48 hours of an ad's public distribution or dissemination. 11 C.F.R. § 104.4.

For example, ISP aired independent expenditure television ads on February 29, 2012. Att. C (Attach comps).

It cannot be disputed that ISP failed to make any report related to those expenditures until APRIL 11, 2012, and when it finally reported, those reports were both

incomplete in accounting for related costs and false with respect to which candidate they supported.

Failure to Disclose Related Costs on 48 Hour IE Reports

ISP's regular quarterly reports reflect expenditures for production/creative costs that are related to its independent expenditure televised advertisements. Their 48-hour independent expenditure reports, however, do not contain these costs.

For example, ISP's April Quarterly Report states:

"Comcast Spotlight MTN
P.O. Box 60000
San Francisco, California 94160

Purpose of Expenditure: Cable TV Advertisements
Name of Federal Candidate supported or opposed by expenditure: Barak Obama
Office Sought: President
State is New Mexico in District
Date Expended = 02/29/2012
Person Completing Form: Michael Corwin
Date Signed = 04/11/2012

Amount Expended = \$6442.47
Calendar YTD Per Election for Office Sought = \$6442.47"

Yet none of ISP's 48-hour reports contain this expenditure.

Improper Disclaimers

Federal law is neither new nor ambiguous concerning disclaimers required for television advertisements. 11 C.F.R. 110.119(c)(4) requires that television ads paid for by third parties, such as ISP, and not authorized by a candidate must include:

- A verbal statement that "XXX is responsible for the content of this advertising";
- A similar written statement;
- A written statement stating that the advertisement was "Paid for by ISP";

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- A written statement that the advertising was "not authorized by any candidate or candidate's committee"; and
- ISP's street or web address, or telephone number.

ISP's disclaimers fail to meet these requirements and that failure must be willful, as Mr. Corwin is an experienced political operative who has worked on many federal campaigns, including the presidential campaign of Bill Richardson in 2008.

CONCLUSION

The facts are clear: ISP has violated Federal law, and ISP and CWA have engaged in a conspiracy in violation of federal law. These violations are ongoing, and are likely to continue throughout the 2012 election cycle and beyond. The FEC must take immediate action.

On the basis of the foregoing, the New Mexico Republican Party respectfully requests that the FEC:

- (1) Conduct an expedited investigation of the above to determine the exact amount of unreported expenditures;
- (2) Refer ISP's knowing and willful violations to the United States Department of Justice for immediate criminal investigation;
- (3) Refer ISP and CWA's conspiracy to the United States Department of Justice for immediate criminal investigation;
- (4) Impose any and all penalties grounded in violations alleged in this complaint, or as otherwise deemed necessary by the Commission

Respectfully submitted,

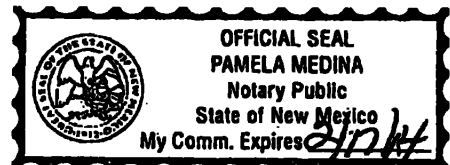
Monty Newman, Chairman

Subscribed and sworn before me this 3rd day of ^{MAY}~~April~~, 2012.


Notary Public

My Commission Expires:

2/17/2014
Date



ATTACHMENT A

CWA: Governor Susana Martinez's Dangerous New Agenda Raising Red Flags

Democracy for New Mexico

September 13, 2011 Tuesday 10:48 PM EST

<http://w3.nexis.com/new/docview/getDocForCuiReq?perma=true&oc=00240&ini=53SW-GG31-DXX7-H4HF&csi=299488&secondRedirectIndicator=true>

Cuidado! The Communication Workers of America (CWA) Local 7076 in Santa Fe released the following statement today strongly warning that the agenda of Governor Susana Martinez increasingly appears to be headed towards imposing union-busting measures on government workers that are even worse than those we've seen in other states. And her misguided agenda, pumped by the infamous Koch brothers via ALEC, could also lead to a system of growing cronyism and political patronage. A must-read column:

Is New Mexico the latest battleground for ideologically-motivated union-busting?

In an apparent egregious political miscalculation (and despite surefire warning signs coming out of Wisconsin and Ohio) New Mexico appears next in the line of states battling over the voice of middle-class state workers. At the behest of Governor Susana Martinez, New Mexico appears dangerously close to forcing through a power-grabbing contract with its employees - a contract that, if approved, is likely to have serious consequences for the rise of public corruption and cronyism in the state. This most recent case of government overreach has left political observers and New Mexicans alike wondering whether the state will play host to the next showdown over basic workers' rights.

A System of Cronyism and Political Patronage: New Mexico workers are not unfamiliar with the brand of government overreach Susana Martinez has proposed in the most recent round of negotiations. State employees are already restricted in what they are allowed to negotiate for - they're currently prohibited from bargaining for pensions; and have in the past been forced to take furlough days, pay cuts, and heavier workloads with little say in the process.

Martinez's demands go even further, and if implemented, have dangerous implications for the escalation of corruption and cronyism in New Mexico State Government. Among her proposals: Sick Days: Workers will be prohibited from using sick days to care for an ailing spouse or child. Flex scheduling: a system that allows workers to rearrange schedules or request make up hours in case of an emergency - will be abolished.

Annual Reviews: A total elimination of annual performance evaluations. Under Gov. Martinez's proposals, evaluations will take place only when a supervisor chooses to conduct them. The right of workers to challenge negative performance evaluations - a favorite tool of managers wishing to engage in retaliatory action against workers - will also be eliminated.

Outsourcing: The Governor has requested, through her contract proposal, free reign to outsource as many state jobs as possible to the private sector, allowing her to reward her largest private sector contributors with lucrative public contracts.

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Not even Gov. Walker in Wisconsin, whose anti-union policies drew hundreds of thousands of protestors to the state capitol for weeks, or Ohio's Governor Kasich, who will face a popular referendum on his anti-collective bargaining in November, attempted to remove so much from state workers. Gov. Martinez's proposals translate into a near-feudal public employment system, where upper-level managers possess exclusive, unchecked control over workload, performance reviews, discipline and preferential treatment.

Mirroring Wisconsin and Ohio: These days adopting or copying the anti-worker policies of Governors Walker and Kasich in Wisconsin and Ohio would strike any keen political observer as foolish and politically risky - no matter how dire a particular state's economic projection. This summer both Governors have found themselves and their parties in real danger of losing significant political support after forcing anti-collective bargaining, pension-slashing legislation through their state's legislatures. Their critical mistakes - leading to the loss of two Republican seats in the Wisconsin state senate and the potential renegotiation of SB 5, the anti-collective bargaining law Kasich carefully shepherded through the state legislature - now appear as obvious warning signs; helpful indications of what not to do as a state leader.

Gov. Martinez seems to have missed that memo. Her administration is currently attempting to negotiate a new contract with the state's employees that far "out-Walkers" what the Wisconsin Governor himself shepherded through the state's legislature. Policies like the ones she's proposing have no doubt been deemed politically toxic by governors of other states, but for some reason the Governor seems intent on fully silencing the voices of the state's workers. Unseen Influences: A number of outside forces have helped to shape Martinez's new direction. During the 2010 campaign cycle, the infamous Koch brothers - notorious for their close ties to ALEC (the American Legislative Exchange Council) and for their principled donations to ideologically extreme right-wing Governors, causes and national-level elected officials - contributed \$10,000 to the Martinez campaign. Martinez also received \$1.3 million from the Republican Governor's Association, who themselves took over \$1 million from the Koch brothers.

But it's not just Martinez's campaign contributions that make for obvious ties between her administration and the outside right-wing groups most known for tampering with state legislative activity. State political blog Clearly New Mexico reported earlier this year that "error-ridden language from a bill crafted by the billionaire Koch Brothers and served up as a template for a number of states" had recently surfaced in the New Mexico state Legislature. The legislation - a near replica of one of ALEC's model bills, provided to state legislators for a small membership fee - would have pulled the state out of the Western Climate Initiative (a regional pact formed in 2007 to reduce the effects of climate change).

In an odd and unlikely coincidence, withdrawing from the WCI also happens to be listed as one of the top recommendations of the Governor's Small Business-Friendly Task Force, which appears to recommend Martinez "revise or rescind virtually every pending environmental" regulation "and a number of existing ones." [Clearly New Mexico, March 17, 2011] Possible VP Impact: Gov. Martinez's high approval rating and sound victory over Democrat Diane Denish in her 2010 race for Governor has led members of both the state and national media to consider her a top contender for the Republican Vice-Presidential Nomination. However, if Wisconsin and Ohio serve as any indication, Martinez's anti-worker proposals have the potential to severely damage her image and thus impact her chances of receiving the nomination. Both

Walker and Kasich watched their popularity plummet after instituting union-busting legislation and now face nasty uphill political battles months after passing their respective bills.

Such ideologically extreme anti-worker proposals have the potential to define Gov. Martinez to a broad swath of people to whom she may be unfamiliar - in a way that has the potential to be unfortunately damaging in 2012. Hard talk around unions may be what works in a GOP primary and might prove popular with the GOP's ideologically extreme base - but what's important for the general election and the vice-presidential nod is another thing altogether.

QUOTES:

Donald Aire, President CWA Local 7076: "CWA, AFSCME, And FOP Are United And Refuse To Accept The Drastic And Unnecessary Take-Backs Governor Martinez Is Proposing. The Governor's Proposals To Roll Back Decades Of Improvements Are Widely Perceived As Bargaining In Bad-Faith, And Are Aimed At Eliminating Employee Rights At Work." (Donald Aire, "President's Message to CWA-NM Members // April 11, 2012," CWA Local 7076, www.cwa7076.org, 04/11/12)

"Under This Administration, Public, University, And UNM Hospital Employees Are Feeling The Heat Of A Governor Who Believes Public Services And Institutions Can Be Run Like An Unethical Foreign For-Profit Company." (Donald Aire, "President's Message to CWA-NM Members // April 11, 2012," CWA Local 7076, www.cwa7076.org, 04/11/12)

"CWA Is Actively Engaged With The 99% Spring And Has Launched The Site OhSusana.Org To Send Our Message. Together We're Calling On Governor Martinez — Fill The Thousands Of Vacant State Jobs, Stop Attacking People's Rights At Work, Stop Vetoing Good Bi-Partisan Legislation (Like Senate Bill 9) That Helps Our Nm Businesses To Create Jobs." (Donald Aire, "President's Message to CWA-NM Members // April 11, 2012," CWA Local 7076, www.cwa7076.org, 04/11/12)

"Miles Conway Says Gov. 'Susana Martinez' Administration Is Actively Working Against The Department Of Health." (Peters, Joey, "Department of Help," Santa Fe Reporter (California), 12/07/11 - 12/13/11)

Mary Taylor, CWA District 7 Vice-President: "It's A Classic Example Of An Anti-Worker Governor Overreaching. ... Whether It's Scott Walker In Wisconsin Or Governor Martinez Here In New Mexico, The Public Knows An Illegal Power Grab When It Sees One. We're Pleased That The New Mexico Supreme Court So Strongly Affirmed Our Position." (Communications Workers of America, "New Mexico Supreme Court Restores Public Employee Labor," www.cwa-union.org, 04/21/12)

Miles Conway, Head Of CWA's NM Legislative-Political Action Team: "Any Chance The Governor Gets A Change To Run Her Government More Like A Walmart, She Does." (Communications Workers of America, "Oh Susana' Sings A Different Tune," www.cwa-union.org, 04/05/12)

Shane Larson, CWA Legislative Director: "It Really Rolls The Contract Back To The Age Of Political Patronage In The Civil Service. ... She Really Wants To Politicize

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Whole State's Workforce." (Communications Workers of America, "'Oh Susana' Sings A Different Tune," www.cwa-union.org, 04/05/12)

"Here In New Mexico, Some Have Speculated That The Setback To Gov. Kasich And The Results In Ohio Have Little Bearing On Gov. Martinez And Our State's Ongoing Bargaining Process Because Gov. Martinez Hasn't Tried To Eliminate Public Workers' Unions In The Fashion Of Ohio And Kasich's Ideological Brother-In-Extremism In Wisconsin, Gov. Scott walker (R). However, This Is Largely Because Gov. Martinez Doesn't Have The Same Control Over The State Legislature, So She's Attempting Through Backdoor Means To Achieve The Same Extreme Outcome -- Eliminating Workers' Rights And Voices." (CWA 7076 - Press Release, *"Ohio Voters Offer A Cautionary Tale for Gov. Susana Martinez About Workers' Rights in New Mexico,"* www.cwa7076.org, 11/16/11)

Robin Gould, CWA Representative And Lead Contract Negotiator: "They Might Not Be Identical Twins, But John Kasich's SB5 Bill In Ohio And Susana Martinez's Union-Busting Attempts In New Mexico Nonetheless Bear A Strong Familial Resemblance. ... Both Governors And Both Attempts To Silence Workers' Voices Are Built On The Myth That Eliminating The Rights And Voices Of Public Sector Workers Will Somehow Aid The State's Economic Recovery." (CWA 7076 - Press Release, *"Ohio Voters Offer A Cautionary Tale for Gov. Susana Martinez About Workers' Rights in New Mexico,"* www.cwa7076.org, 11/16/11)

"Earlier This Year, Gov. Martinéz Attempted To Eliminate The Labor Board, Which Did Not Work. Now, She's Set Her Sights On Trying To Strip State Workers' Rights Further Through Negotiations, Remaining Insistent In Efforts To Eliminate Three Decades Of Worker Gains (Including Basic Rights Like Breaks)." (CWA 7076 - Press Release, *"Ohio Voters Offer A Cautionary Tale for Gov. Susana Martinez About Workers' Rights in New Mexico,"* www.cwa7076.org, 11/16/11)

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ATTACHMENT B

Michael Corwin, Independent Source PAC Executed Director: "We Did This To Support (President Barack) Obama And (Vice President Joe) Biden, And That Was Because We Seriously Think She (Martinez) Would Be Horrifically Bad As A Vice President." (James Monteleone, "Anti-Martinez PAC Gets More Union Money", Albuquerque Journal 04/17/12)

"With Martinez Likely Out Of The Vp Picture, Corwin Said His Pac Will Redirect Its Efforts To Trying To Unseat Conservative Members Of The State Legislature." (James Monteleone, "Anti-Martinez PAC Gets More Union Money", Albuquerque Journal 04/17/12)

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